

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE
LITIGATION

This document relates to:

*Brown County Board of County Commissioners
v. Amerisourcebergen Drug Corporation et al*

1:17-op-45035-DAP

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**SHORT FORM FOR SUPPLEMENTING
COMPLAINT AND AMENDING
DEFENDANTS AND JURY DEMAND**

Plaintiff submits this supplemental pleading and Amended Complaint incorporating as if fully set forth herein its own prior pleadings and, if indicated below, the common factual allegations identified and the RICO causes of action included in the Corrected Second Amended Complaint and Jury Demand in the case of *The County of Summit, Ohio, et al., v. Purdue Pharma L.P., et al.*, Case No. 1:18-op-45090 (“*Summit County Pleadings*”), *In Re National Prescription Opiate Litigation*, in the United States District Court for the Northern District of Ohio, Dkt #513, 514¹), and as may be amended in the future, and any additional claims asserted herein. Plaintiff also hereby amends its complaint to alter the defendants against which claims are asserted as identified below. To the extent defendants were previously sued in plaintiff(s)’ existing complaint and they are no longer identified as defendants herein, they have been dismissed without prejudice except as limited by CMO-1, Section 6(e). Doc. #232.

¹ Docket #513 is the redacted Summit Second Amended Complaint and Docket #514 is the unredacted Summit Corrected Second Amended Complaint filed under seal in Case No. 1:17-md-02804-DAP. The redacted Summit Corrected Second Amended Complaint is also filed in its individual docket, Case No. 1:18-op-45090-DAP, Docket #24.

INCORPORATION BY REFERENCE OF EXISTING COMPLAINT

Plaintiff(s)' Existing Complaint, Brown County Board of County Commissioners v. Amerisourcebergen Drug Corporation et al (1:17-op-45035-DAP), as may have been previously amended, is expressly incorporated by reference to this Short Form as if fully set forth herein except to the extent that allegations regarding certain defendants that are not listed in section 1 below are dismissed without prejudice.

PARTIES – DEFENDANTS

1. Having reviewed the relevant ARCOS data, Plaintiff asserts claims against the following Defendants:

AMERISOURCEBERGEN DRUG CORPORATION, CARDINAL HEALTH, INC., McKESSON CORPORATION, PURDUE PHARMA L.P., PURDUE PHARMA INC., PURDUE FREDERICK COMPANY, INC., TEVA PHARMACEUTICAL INDUSTRIES, INC., TEVA PHARMACEUTICALS USA, INC., CEPHALON, INC., JOHNSON & JOHNSON, JANSSEN PHARMACEUTICALS INC., ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS INC., JANSSEN PHARMACEUTICA INC., NORAMCO, INC., ENDO HEALTH SOLUTIONS INC., ENDO PHARMACEUTICALS INC., ALLERGAN PLC, WATSON PHARMACEUTICALS, INC., WATSON LABORATORIES INC., ACTAVIS LLC, ACTAVIS PHARMA, INC., MALLINCKRODT PLC, MALLINCKRODT LLC, H.D. SMITH, LLC D/B/A H.D. SMITH, F/K/A H.D. SMITH WHOLESALE DRUG COMPANY, MIAMI-LUKEN, INC., SPECGX, LLC, PAR PHARMACEUTICAL, INC., PAR PHARMACEUTICAL COMPANIES, INC., AMNEAL PHARMACEUTICALS, LLC, THE KROGER CO., CVS HEALTH CORPORATION.

I, Anthony J. Majestro, Counsel for Plaintiff(s), certify that in identifying all Defendants, I have followed the procedure approved by the Court and reviewed the ARCOS data that I understand to be relevant to Plaintiff(s). I further certify that, except as set forth below, each of the Defendant(s) newly added herein appears in the ARCOS data I reviewed. I understand that for each newly added Defendant not appearing in the ARCOS data I must set forth below factual allegations sufficient to state a claim against any such newly named Defendant that does not appear in the ARCOS data.

Dated: March 12, 2019

Signed: /s/ Anthony J. Majestro

Factual Allegations Regarding Individual Defendants

1.1. Defendants H.D. SMITH, LLC D/B/A H.D. SMITH, F/K/A H.D. SMITH WHOLESALE DRUG COMPANY, MIAMI-LUKEN, INC., SPECGX, LLC, PAR

PHARMACEUTICAL, INC., PAR PHARMACEUTICAL COMPANIES, INC., AMNEAL PHARMACEUTICALS, LLC, THE KROGER CO., CVS HEALTH CORPORATION are hereby added as Defendants by this pleading based on the following jurisdictional allegations:

1.1.1 Defendant **H.D. Smith, LLC d/b/a H.D. Smith, f/k/a H.D. Smith Wholesale Drug Company** (“H.D. Smith”), through its various DEA registered subsidiaries and affiliated entities, is a wholesaler of pharmaceutical drugs that distributes opioids throughout the country, including in Plaintiff’s Community. H.D. Smith is registered to conduct business and/or conducts business in Plaintiff’s community as a licensed wholesale pharmaceutical distributor under the following named business entities: H.D. Smith Wholesale Drug Company, H.D. Smith Holdings, LLC, and H.D. Smith Holding Company. H.D. Smith Wholesale Drug Company has been restructured and it is currently doing business as H.D. Smith, LLC. H.D. Smith is the largest independent wholesaler in the United States. In January 2018, Defendant AmerisourceBergen acquired H.D. Smith. H.D. Smith is a distributor of wholesale brand, generic and specialty pharmaceuticals and is a Delaware limited liability company with its principal place of business in Springfield, Illinois. At all times relevant to this Complaint, H.D. Smith distributed prescription opioids throughout the United States, including in Plaintiff’s Community specifically. H.D. Smith distributed opioids, in violation of the duties owed to Plaintiff as set forth in Plaintiff’s original complaint and the other allegations incorporated herein, in sufficient quantities to be a proximate cause of Plaintiff’s injuries. H.D. Smith is sued as a Distributor Defendant.

1.1.2 Defendant **Miami-Luken, Inc.** (“Miami-Luken”) is an Ohio corporation with its headquarters and principal place of business in Springboro, Ohio. Miami-Luken is registered to conduct business and/or conducts business in Plaintiff’s community as a licensed wholesale

pharmaceutical distributor. Miami-Luken distributed opioids, in violation of the duties owed to Plaintiff as set forth in Plaintiff's original complaint and the other allegations incorporated herein, in sufficient quantities to be a proximate cause of Plaintiff's injuries. Miami-Luken is sued as a Distributor Defendant.

1.1.3 Defendant **SpecGx, LLC** is a Delaware limited liability company with its headquarters in Clayton, Missouri and is a wholly owned subsidiary of Defendant Mallinckrodt plc. SpecGx, LLC is registered to conduct business and/or conducts business in Plaintiff's community as a licensed wholesale pharmaceutical distributor. SpecGx, LLC distributed opioids, in violation of the duties owed to Plaintiff as set forth in Plaintiff's original complaint and the other allegations incorporated herein, in sufficient quantities to be a proximate cause of Plaintiff's injuries. SpecGx, LLC is sued as a Marketing Defendant.

1.1.4 Defendant **Par Pharmaceutical, Inc.** is a Delaware corporation with its principal place of business located in Chestnut Ridge, New York. Par Pharmaceutical, Inc. is a wholly-owned subsidiary of Par Pharmaceutical Companies, Inc. f/k/a Par Pharmaceutical Holdings, Inc. Defendant **Par Pharmaceutical Companies, Inc.** is a Delaware corporation with its principal place of business located in Chestnut Ridge, New York. (Par Pharmaceutical, Inc., and Par Pharmaceutical Companies, Inc., collectively "Par Pharmaceutical") was acquired by Endo International plc in September 2015 and is an operating company of Endo International plc. Par Pharmaceutical is registered to conduct business and/or conducts business in Plaintiff's community as a licensed wholesale pharmaceutical distributor. Par Pharmaceutical distributed opioids, in violation of the duties owed to Plaintiff as set forth in Plaintiff's original complaint and the other allegations incorporated herein, in sufficient quantities to be a proximate cause of Plaintiff's injuries. Par Pharmaceutical is sued as a Marketing Defendant.

1.1.5 Defendant **Amneal Pharmaceuticals, LLC** (“Amneal”) is a Delaware limited liability company with its principal place of business in Branchburg, New Jersey. Amneal manufactures, promotes, distributes and/or sells opioids nationally, including many Schedule II controlled substances such as Oxycodone and Hydrocodone. Amneal is registered to conduct business and/or conducts business in Plaintiff’s community as a licensed wholesale pharmaceutical distributor. Amneal distributed opioids, in violation of the duties owed to Plaintiff as set forth in Plaintiff’s original complaint and the other allegations incorporated herein, in sufficient quantities to be a proximate cause of Plaintiff’s injuries. Amneal is sued as a Marketing Defendant.

1.1.6 Defendant **The Kroger Co.** is an Ohio corporation with headquarters in Cincinnati, OH. Kroger operates 2,268 pharmacies in the United States. The Kroger Co. conducts business as a licensed wholesale distributor under the following named business entities: Kroger Limited Partnership I (“Kroger I”) and Kroger Limited Partnership II (collectively “Kroger”). Kroger is registered to conduct business and/or conducts business in Plaintiff’s community as a licensed wholesale pharmaceutical distributor. Kroger distributed opioids, in violation of the duties owed to Plaintiff as set forth in Plaintiff’s original complaint and the other allegations incorporated herein, in sufficient quantities to be a proximate cause of Plaintiff’s injuries. Kroger is sued as both a Distributor Defendant and as a National Retail Pharmacy Defendant.

1.1.7 Defendant **CVS Health Corporation** is a Delaware corporation with its principal place of business in Rhode Island. CVS Health Corporation conducts business as a licensed wholesale distributor under the following named business entities: CVS Indiana, L.L.C.; CVS Orlando FL Distribution; CVS Pharmacy, Inc.; CVS RX Services, Inc, d/b/a CVS Pharmacy

Distribution Center; CVS TN Distribution, LLC ; and CVS VERO FL Distribution, L.L.C (collectively “CVS”). CVS is registered to conduct business and/or conducts business in Plaintiff’s community as a licensed wholesale pharmaceutical Distributor. CVS distributed opioids, in violation of the duties owed to Plaintiff as set forth in Plaintiff’s original complaint and the other allegations incorporated herein, in sufficient quantities to be a proximate cause of Plaintiff’s injuries. CVS conducts business and is sued as both a Distributor Defendant and as a National Retail Pharmacy Defendant.

COMMON FACTUAL ALLEGATIONS

2. By checking the boxes in this section, Plaintiff hereby incorporates by reference to this document the common factual allegations set forth in the *Summit County* Pleadings as identified in the Court’s Order implementing the Short Form procedure. Dkt. #1282.

- ☒ Common Factual Allegations (Paragraphs 130 through 670 and 746 through 813)
- ☒ RICO Marketing Enterprise Common Factual Allegations (Paragraphs 814-848)
- ☒ RICO Supply Chain Enterprise Common Factual Allegations (Paragraphs 849-877)

3. If additional claims are alleged below that were not pled in Plaintiff’s Existing Complaint (other than the RICO claims asserted herein), the facts supporting those allegations must be pleaded here. Plaintiff(s) assert(s) the following additional facts to support the claim(s) identified in Paragraph 6 below (below or attached):

N/A

CLAIMS

4. The following federal **RICO causes of action** asserted in the *Summit County* Pleadings as identified in the Court’s implementing order and any subsequent amendments, Dkt. 1282, are incorporated in this Short Form by reference, in addition to the causes of action already asserted in the Plaintiff(s)’s Existing Complaint (check all that apply):

- ☒ First Claim for Relief – Violation of RICO, 18 U.S.C. § 1961 *et seq.* – Opioid Marketing Enterprise (Against Defendants Purdue, Cephalon, Janssen, Endo and Mallinckrodt (the “RICO Marketing Defendants”)) (*Summit County* Pleadings, Paragraphs 878-905)
- ☒ Second Claim for Relief – Violation of RICO, 18 U.S.C. § 1961 *et seq.* – Opioid Supply Chain Enterprise (Against Defendants Purdue, Cephalon, Endo, Mallinckrodt, Actavis,

McKesson, Cardinal, and AmerisourceBergen (the “RICO Supply Chain Defendants”))
(*Summit County* Pleadings, Paragraphs 906-938)

5. Plaintiff asserts the following **additional claims** as indicated (below or attached):
N/A

6. To the extent Plaintiff(s) wish(es) to **dismiss claims** previously asserted in
Plaintiff(s)’s Existing Complaint, they are identified below and will be dismissed without
prejudice: N/A

WHEREFORE, Plaintiff(s) prays for relief as set forth in the *Summit County* Pleadings in
In Re National Prescription Opiate Litigation in the United States District Court for the Northern
District of Ohio, MDL No. 2804 and in Plaintiff’s Existing Complaint as has been amended herein.

Dated: March 12, 2019

/s/Anthony J. Majestro

Attorney for Plaintiff(s)

Anthony J. Majestro

J.C. Powell

James S. Nelson

Christina L. Smith

POWELL & MAJESTRO, PLLC

405 Capitol Street, Suite P-1200

Charleston, WV 25301

Tel.: 304-346-2889

Fax: 304-346-2895

amajestro@powellmajestro.com

jcpowell@powellmajestro.com

jnelson@powellmajestro.com

csmith@powellmajestro.com

/s/J. Burton LeBlanc, IV

Russell W. Budd

J. Burton LeBlanc, IV

Laura J. Baughman

Christine C. Mansour

BARON & BUDD, P.C.

3102 Oak Lawn Avenue, Suite 1100

Dallas, TX 75219

Tel.: 214-521-3605

Fax: 214-520-1181

rbudd@baronbudd.com

bleblanc@baronbudd.com

lbaughman@baronbudd.com

cmansour@baronbudd.com

/s/Peter J. Mougey

Peter J. Mougey

Troy Rafferty

Archie C. Lamb, Jr.

Page A. Poerschke

Laura S. Dunning

Jeffrey Gaddy

LEVIN, PAPANTONIO, THOMAS,

MITCHELL, RAFFERTY &

PROCTOR, P.A.

316 S. Baylen Street, Suite 600

Pensacola, FL 32502-5996

Tel.: 850-435-7068

Fax: 850-436-6068

pmougey@levinlaw.com

trafferty@levinlaw.com

alamb@levinlaw.com

ppoerschke@levinlaw.com

ldunning@levinlaw.com

jgaddy@levinlaw.com

/s/ Paul T. Farrell, Jr.

Paul T. Farrell, Jr.

M. Bert Ketchum, III

Greene, Ketchum, Farrell,

Bailey & Tweel, LLP

419 - 11th Street (25701)/ P.O. Box 2389

Huntington, West Virginia 25724-2389

Phone: 800.479.0053 or 304.525.9115

Fax: 304.529.3284

paul@greeneketchum.com

bert@greeneketchum.com

/s/James C. Peterson

R. Edison Hill (WVSB No. 1734)

James C. Peterson (WVSB No. 2880)

Harry C. Deitzler (WVSB No. 981)

Aaron L. Harrah (WVSB No. 9937)

Sandra B. Harrah (WVSB No. 7130)

Douglas A. Spencer (WVSB No. 9369)

HILL, PETERSON, CARPER,

BEE & DEITZLER, PLLC

NorthGate Business Park

500 Tracy Way

Charleston, WV 25311

Tel.: 304-345-5667

Fax: 304-345-1519

jcpeterson@hpcbd.com

rehill@hpcbd.com

HGDeitzler@hpcbd.com

aaron@hpcbd.com

sandra@hpcbd.com

doug@hpcbd.com

/s/Michael J. Fuller, Jr.

Michael J. Fuller, Jr.

Amy J. Quezon

**MCHUGH FULLER LAW GROUP,
PLLC**

97 Elias Whiddon Rd.

Hattiesburg, MS 39402

Tel.: 601-261-2220

Fax: 601-261-2481

mike@mchughfuller.com

amy@mchughfuller.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2019, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF System. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF Systems.

/s/Anthony J. Majestro
Anthony J. Majestro
Attorney for Plaintiff(s)